

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SHAKESPEARE MACHINE
STAMPING OF WISCONSIN INC.,

Plaintiff,

v.

Case No. 19-cv-402-pp

STANLEY BLACK & DECKER, INC.,
and BULLARD ABRASIVES, INC.,

Defendants.

**ORDER REMINDING PLAINTIFF OF OPTION TO FILE AMENDED
COMPLAINT IN LIEU OF RESPONDING TO DEFENDANTS' MOTION TO
DISMISS (DKT. NO. 16)**

On May 15, 2019, the defendants filed a motion to dismiss the complaint for failure to state a claim under Rule 12(b)(6). Dkt. No. 16. The defendants allege that Counts One through Four fail to state a plausible claim for trade dress relief because the plaintiff failed to describe the alleged trade dress with sufficient particularity and, to the extent the plaintiff did describe it, the features are functional and include safety warnings. Dkt. No. 17. The defendants assert that the court should dismiss Count Four for an additional reason—because there is no private right of action under Wis. Stat. §100.20.¹ Id.

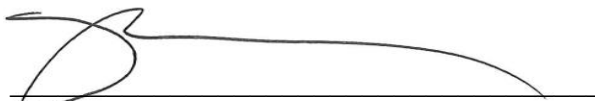
¹ It appears that the plaintiff may have mistakenly labeled Count Four as “Count VI.” Dkt. No. 1 at 14.

Under Civil Local Rule 7(b), if the plaintiff wishes to oppose the motion, it must do so within twenty-one days—that is, by June 5, 2019. The plaintiff is free to timely file a response to the motion to dismiss, but the court reminds the plaintiff that it has another option—it may file an amended complaint to try to cure the alleged deficiencies. See Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. and Nw. Ind., 786 F.3d 510, 522 (7th Cir. 2015) (explaining that a responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided). Federal Rule of Civil Procedure 15(a)(1) allows the plaintiff to file the amended complaint as a matter of course within twenty-one days after service of the responsive pleading.

The court **ORDERS** that by June 5, 2019, the plaintiff either shall file an amended complaint or shall file its response to the motion to dismiss.

Dated in Milwaukee, Wisconsin this 20th day of May, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', is written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge